



University of Kentucky  
**UKnowledge**

---

1970-1979

Briefs

---

4-5-1976

# Robert Earl Manley v. Nance Nursing Home, Peninsula Fire Insurance Company, Special Fund, and Kentucky Workmen's Compensation Board

Appellee's Brief 1976-SC-0058

**Right click to open a feedback form in a new tab to let us know how this document benefits you.**

Follow this and additional works at: [https://uknowledge.uky.edu/ky\\_appeals\\_briefs70s](https://uknowledge.uky.edu/ky_appeals_briefs70s)



Part of the [Courts Commons](#)

---

## Repository Citation

1976-SC-0058, Appellee's Brief, "Robert Earl Manley v. Nance Nursing Home, Peninsula Fire Insurance Company, Special Fund, and Kentucky Workmen's Compensation Board" (1976). 1970-1979. 473.

[https://uknowledge.uky.edu/ky\\_appeals\\_briefs70s/473](https://uknowledge.uky.edu/ky_appeals_briefs70s/473)

This Brief is brought to you for free and open access by the Briefs at UKnowledge. It has been accepted for inclusion in 1970-1979 by an authorized administrator of UKnowledge. For more information, please contact [UKnowledge@lsv.uky.edu](mailto:UKnowledge@lsv.uky.edu).



**KYSC1976-SC-0058-06**

{97B0EF61-D089-4BD2-9C3A-6BAA25FC01CD}

{134944}{54-130314:143100}{040576}

# **APPELLEE'S BRIEF**

---

# SUPREME COURT OF KENTUCKY

FILE NO. 76-58

---

ROBERT EARL MANLEY ..... APPELLANT

VS.

NANCE NURSING HOME, PENINSULA  
FIRE INSURANCE COMPANY, SPECIAL  
FUND, AND KENTUCKY WORKMEN'S  
COMPENSATION BOARD ..... APPELLEES

---

APPEAL FROM MCCrackEN CIRCUIT COURT  
HON. J. BRANDON PRICE, JUDGE

---

## BRIEF FOR APPELLEE

# FILED

---

APR 5 1976

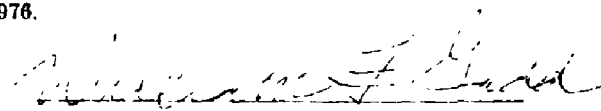
JAMES R. YOCOM,  
Commissioner of Labor and  
Custodian of the Special Fund

MARTHA LAYNE COLLINS

CLERK  
SUPREME COURT

## CERTIFICATE OF SERVICE

This is to certify that pursuant to R.C.A. 1.250 a copy of the within brief has been served on the Honorable James W. Owens, Attorney at Law, 829 Washington Street, Paducah, Kentucky 42001; Honorable George Effinger Attorney at Law, Citizens Bank Building, Paducah, Kentucky 42001; Honorable William Huffman, Director, Workmen's Compensation Board, Frankfort, Kentucky 40601; and Honorable J. Brandon Price trial judge McCracken County Courthouse, Paducah, Kentucky 42001, this the 5th day of April, 1976.

  
Of Council For Appellee

---

# **SUPREME COURT OF KENTUCKY**

**FILE NO. 76-58**

---

**ROBERT EARL MANLEY ..... APPELLANT**

**VS.**

**NANCE NURSING HOME, PENINSULA  
FIRE INSURANCE COMPANY, SPECIAL  
FUND, AND KENTUCKY WORKMEN'S  
COMPENSATION BOARD ..... APPELLEES**

---

**APPEAL FROM MCCrackEN CIRCUIT COURT  
HON. J. BRANDON PRICE, JUDGE**

---

## **BRIEF FOR APPELLEE**

---

**MAY IT PLEASE THE COURT:**

### **STATEMENT OF THE QUESTION PRESENTED**

**WAS IT CLEARLY ERRONEOUS FOR THE  
WORKMEN'S COMPENSATION BOARD TO FIND  
THAT THE APPELLANT HAS NO OCCUPA-  
TIONAL DISABILITY WHEN ONE OF THE TES-  
TIFYING PHYSICIANS STATED THAT THE AP-  
PELLANT COULD RETURN TO HIS USUAL  
EMPLOYMENT?**

### **STATEMENT OF THE CASE**

The Workmen's Compensation Board on January 13, 1975 ordered that appellant's claim be dismissed finding that:

1. The plaintiff has not established by proof sufficient to induce conviction that a work related event occurred on or about April 1, 1973 which caused him occupational injury or harmful change in the human organism.
2. If we had been able to make a finding favorable to plaintiff in the preceding paragraph we nevertheless would have concluded that there was an unreasonable delay in giving notice of the accident as soon as practicable after the occurrence.
3. If each of the preceding findings had been favorable to plaintiff, we nevertheless would have been required to enter an Order of Dismissal because there has not been proven to be any significant occupational disability directly attributable to any event which occurred during the short period of time while the plaintiff was in the employ of the defendant. (W.C.B. 206-207) The McCracken Circuit Court affirmed the decision of the Workmen's Compensation Board on 12 September, 1975. (T. R. 9).

### **ARGUMENT**

**IT WAS NOT CLEARLY ERRONEOUS FOR THE WORKMEN'S COMPENSATION BOARD TO FIND THAT APPELLANT HAD FAILED TO PROVE OCCUPATIONAL DISABILITY WHEN ONE OF THE TESTIFYING PHYSICIANS STATED THAT THE APPELLANT COULD RETURN TO HIS USUAL EMPLOYMENT.**

Dr. George Ainsworth testified as follows:

6. . . . as a result of this evaluation, it was felt

that the patient had a sprain and strain of his lumbar spine, which at this point was subsiding. I felt that no specific treatment was indicated and that it was this point following the patient's injury that he could return to his regular employment at the nursing home. . .

7. Doctor, as a physician, are you familiar with the general duties of an aide or orderly in a nursing home?

A. Yes, sir.

8. And you feel that Mr. Manley was able to carry out those duties within his scope of your examination?

A. Yes, sir. (W.C.B. 149-150)

The Workmen's Compensation Board's finding of fact shall stand on appeal unless it is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record. KRS 342.285(3) (a). The basic question to be considered is whether there is substantial evidence which will support the findings of the Board. *Smyzer v. B. F. Goodrich Chemical Company, Ky.*, 474 S.W. 2d 367 (1971); *Blackenship v. Lloyd Blackenship Coal Co., Ky.*, 463 S.W. 2d 62 (1971).

The report of Dr. George Ainsworth (*Supra*) constitutes substantial evidence which supports the findings of the Board.

## **CONCLUSION**

The Judgment of the McCracken Circuit Court should be affirmed with direction that the case be remanded to the Workmen's Compensation Board for enforcement of its Order of January 13, 1975.

Respectfully submitted,

**KENNETH E. HOLLIS**  
General Counsel

**WILLIAM F. GADD**  
Attorney for Special Fund  
Department of Labor  
Frankfort, Kentucky 40601

**ATTORNEYS FOR  
APPELLEE SPECIAL FUND**